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SENATE BILL 262

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO MEDICAL RECORDS; REQUIRING A LAW ENFORCEMENT AGENCY
SEEKING A PATIENT'S MEDICAL RECORDS TO SECURE A SUBPOENA;
PROVIDING FOR NOTICE TO THE PATIENT OR THE PATIENT'S LEGAL
REPRESENTATIVE; AMENDING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 14-6-1 NMSA 1978 (being Laws 1971,
Chapter 137, Section 1, as amended) is amended to read:

"14-6-1. HEALTH INFORMATION-- CONFIDENTIALITY-- IMMUNITY
FROM LIABILITY FOR FURNISHING. --

A. All health information that relates to and
identifies specific individuals as patients is strictly
confidential and shall not be a matter of public record or
accessible to the public even though the information is in the
custody of or contained in the records of a governmental agency

underscoring material = new
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1 or its agent, a state educational institution, a duly organized
2 state or county association of licensed physicians or dentists,
3 a licensed health facility or staff committees of such
4 facilities.

5 B. A custodian of information classified as
6 confidential in Subsection A of this section may furnish the
7 information upon request to a governmental agency or its agent,
8 a state educational institution, a duly organized state or
9 county association of licensed physicians or dentists, a
10 licensed health facility or staff committees of such
11 facilities, and the custodian furnishing the information shall
12 not be liable for damages to any person for having furnished
13 the information. In a criminal action, a patient's medical
14 records may be provided to a law enforcement agency only upon
15 the issuance of a subpoena by a court of competent jurisdiction
16 and the provision of proper notice by the law enforcement
17 agency seeking the patient's medical records to the patient or
18 the patient's legal representative.

19 C. Statistical studies and research reports based
20 upon confidential information may be published or furnished to
21 the public, but these studies and reports shall not in any way
22 identify individual patients directly or indirectly ~~nor~~ or in
23 any way violate the privileged or confidential nature of the
24 relationship and communications between practitioner and
25 patient.

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1 D. This section does not affect the status of
2 original medical records of individual patients, and the rules
3 of confidentiality and accessibility applicable to these
4 records continue in force. This section does not affect the
5 status of vital statistical records of the department of health
6 [~~and environment department~~]. "

7 Section 2. Section 24-1-20 NMSA 1978 (being Laws 1973,
8 Chapter 359, Section 20, as amended) is amended to read:

9 "24-1-20. RECORDS CONFIDENTIAL. --

10 A. The files and records of the department giving
11 identifying information about individuals who have received or
12 are receiving from the department treatment, diagnostic
13 services or preventive care for diseases, disabilities or
14 physical injuries are confidential and are not open to
15 inspection except:

16 (1) where permitted by rule of the department;

17 (2) as provided in Subsection [E] D of this
18 section; and

19 (3) to the secretary [~~of health and~~
20 ~~environment~~] or to an employee of the [~~health and environment~~]
21 department authorized by the secretary to obtain such
22 information, but the information shall only be revealed for use
23 in connection with a governmental function of the secretary or
24 the authorized employee.

25 B. Both the secretary and the employees are subject

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1 to the penalty contained in Subsection [F] G of this section if
2 they release or use the information in violation of this
3 section.

4 ~~[B.-]~~ C. All information voluntarily provided to the
5 director or his agent in connection with studies designated by
6 him as medical research and approved by the secretary [~~of~~
7 ~~health and environment~~], either conducted by or under the
8 authority of the director for the purpose of reducing the
9 morbidity or mortality from any cause or condition of health,
10 is confidential and shall be used only for the purposes of
11 medical research. The information shall not be admissible as
12 evidence in any action of any kind in any court or before any
13 administrative proceeding or other action.

14 ~~[C.-]~~ D. The human services department and the
15 office of the state long-term care ombudsman shall have prompt
16 access to all files and records in the possession of the
17 [~~licensing and certification bureau of the~~] department of of
18 health that are related to any health facility investigation.
19 Officers and employees of those agencies with such access are
20 subject to the penalty in Subsection [F] G of this section if
21 they release or use the information in violation of this
22 section.

23 ~~[D.-]~~ E. The files and records of the department are
24 subject to subpoena for use in any pending cause in any
25 administrative proceeding or in any of the courts of the state,

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[bracketed material] = delete

1 unless otherwise provided by law. In a criminal action, a
2 patient's medical records may be provided to a law enforcement
3 agency only upon the issuance of a subpoena by a court of
4 competent jurisdiction and the provision of proper notice by
5 the law enforcement agency seeking the patient's medical
6 records to the patient or the patient's legal representative.

7 [E-] F. No person supplying information to the
8 department for use in a research project or any cooperating
9 person in a research project shall be subject to any action for
10 damages or other relief as a result of that activity.

11 [F-] G. Any person who discloses confidential
12 information in violation of this section is guilty of a petty
13 misdemeanor. "

14 Section 3. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 2004.

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